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From:

Sent: Thursday, July 31, 2008 2:07:26 PM

To:

Cc:

Subject: Counsel questions for New Orleans meeting

Hi ,

The TMP answers are below, in red. Please let me know if you would like to discuss them further.

Thanks,

From:

Sent: Tuesday, July 15, 2008 3:16 PM

To:

Cc:

Subject: Counsel questions

To follow up on our phone conversation today, I said I would send you a list of the questions we had for Counsel to address in the meeting. These are the ones we had so far.

Counsel Presentation

1. Hot Topics – what's happening with p'ships, recent court cases etc

2. TMP issues

- designation of TMP for an LLC with no member managers
 - If there are no member-managers, each member will be treated as a member-manager. Treas. Reg. 301.6231(a)(7)-2. A TMP will then be designated in accordance with Treas. Reg. 301.6231(a)(7)-1, with each member of the LLC treated as a general partner.
- designation of TMP for LLC with LP
 - The limited partner cannot be designated TMP because a limited partner does not have the power to bind the partnership under state law.
- designation for LLC and TMP is also LLC
 - The TMP of an LLC can be another LLC. However, statute extensions must be signed by a managing member of the second tier LLC in order to be binding on the partnership.

- discussion of who signs in various complicated scenarios and what the signature would look like:
 - TEFRA LP key case with a TEFRA LLC as its TMP. That LLC is also a TEFRA entity, with another LP as its TMP. Then finally, that LP is also a TEFRA entity with its TMP being a corporation.
 - Same scenario except the TEFRA LP key case TMP is another TEFRA LP.
 - Same scenario except the TEFRA LP key case TMP is a corporation which no longer exists.
 - In all of these scenarios, the structure of the lower tiers is irrelevant. The TMP is a creature of statute and has authority to extend the period of limitations for all of the partners, but has no power to bind the partnership itself. Consequently, the person who signs must have the power to bind the second-tier entity (the TMP of the TEFRA key entity) under state law. For example, if the TMP is itself an LLC, a manager under state law must sign for the LLC as TMP of the key entity, regardless of whether the LLC is manager-managed or member-managed.
 - Signature: TEFRA, LLC, TMP of TEFRA LP, by John Doe, manager.
 - John Doe should always be someone with the power to bind the second-tier: a general partner in the case of a partnership or a manager in the case of an LLC.
 - Same scenario except the TEFRA LP key case TMP is a single member LLC. What happens when the single member LLC has filed a partnership return?
 - A single member LLC cannot elect to be classified as a partnership and cannot file a partnership return. Although this issue has not been litigated, we would likely argue that a single member LLC should not be treated as a partnership simply by virtue of having filed a partnership return.
 - discussion as to who the TMP is when the key case no longer exists. In this case who will sign a statute extension if necessary.
 - If the key case no longer exists, why would a statute extension be required? Under Chef's Choice, since a TEFRA proceeding is a class action of the partners and not the partnership, the continued existence of the partnership is irrelevant. Is that what you are getting at here?
 - A limited partner (2-partner LP) wants to be designated as the TMP because the general partner (1% interest) who was the TMP has had his partnership items converted to non-partnership via a settlement agreement.
 - The settlement agreement and conversion will only affect the year(s) at issue in the FPAA. The partnership will continue with the general partner as TMP. A TMP whose items have converted under a settlement agreement remains the TMP. His status would only terminate if the conversion occurs under a special enforcement regulation (i.e., bankruptcy, jeopardy assessment, etc.). Treas. Reg. 301.6231(a)(7)-1(L)(1)(iv).
3. FPAA
- how to revise or can it be revised after issuance

- can we withdraw an FPAA
 - can we issue more than 1 in tiering situation? If not, specifically how do we do the FPAA? We want *examples*
4. Parent and Sub
 - notice prep
 - 870PT when sub is ptr.
 - Statutes
 5. Transaction occurs in early year but loss taken at 1065 level in future year, or transaction occurs in early year but loss taken by investor in subsequent year